

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NO.: 6-15-bk-04338-ABB

In re:

ERIC MESSBAUER,

Debtor(s).

**TRUSTEE'S MOTION TO DISMISS CASE  
FOR FAILURE TO FILE A FEASIBLE PLAN**

**Notice of Opportunity to Object and for Hearing**

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files an objection within twenty-one (21) days from the date of service of this paper. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Bankruptcy Court at 400 W. Washington Street, Suite 5100, Orlando, Florida 32801, and serve a copy of the same on the Chapter 13 Trustee, Laurie K. Weatherford, Post Office Box 3450, Winter Park, Florida 32790.

If you file and serve an objection within the time permitted, the Court will schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing and may grant the relief requested.

COMES NOW, Laurie K. Weatherford, the Chapter 13 Trustee, and files her Motion to Dismiss for Failure to File a Feasible Chapter 13 Plan, and as grounds states as follows:

1. The voluntary petition was filed on May 18, 2015.
2. The Debtor filed with the Court his Chapter 13 Plan on June 15, 2015 (Document No. 16).
3. The Section 341 Meeting of Creditors in this case is set for June 18, 2015 at 10:00 a.m. The Debtor's attendance at this meeting is mandatory.

4. The Debtor has failed to provide the Trustee with copies of his 2011, 2012, 2013 and 2014 Income Tax Returns, as required by the Bankruptcy Code.
5. Pursuant to the Bankruptcy Code, the Debtor's first Chapter 13 Plan payment is due 30 days after the filing of the Petition in this case. *The Debtor's first payment is due on June 17, 2015.*
6. The Chapter 13 Plan filed by the Debtor states that the Debtor shall pay to the Trustee \$0.00 per month. The term, or length of the plan is not stated; however, the Debtor's Form B22C states that the Debtor is below median income, and would qualify for a 36 month plan. The Debtor's plan does not reflect that the Trustee is to make any payments to any creditor.
7. The Debtor's Schedule A reflects that the debtor owns real property having an address of 299 East Central Blvd., #1, Cape Canaveral, FL 32920. The Debtor lists the value of the property as "unknown".
8. The Debtor has failed to file a Schedule D in this case, which lists all secured debts owing by the Debtor, including any mortgage(s). The Debtor's Statement of Financial Affairs, Question 4, reflects that Ebb Tide Condominium Association commenced a foreclosure action against the Debtor in 2013, and obtained a Final Judgment. The Debtor has failed to list this Creditor as a secured debt, and has failed to include this creditor in the plan relating to any pre-petition debt owing. It is unknown if there is a mortgage on this property.
9. The Debtor has failed to file a Schedule E in this case, which would list all of the Debtor's priority debts owing.

10. The Debtor's Schedule F lists debts in "unknown" amounts, with \$0.00 balances. Included in Schedule F are debts owing to Ebb Tide Condominium and the Internal Revenue Service.
11. The Debtor has failed to file Schedules G and H in this case.
12. Schedule I filed by the Debtor reflects income of \$440.00 per month.
13. The Debtor's Schedule J reflects monthly expenses of \$390.00 per month, and reflects that the Debtor's Disposable Income is \$0.00 per month.
14. Based on the reported monthly income of \$440.00 per month, minus reported expenses of \$390.00 per month, the Debtor's Schedule J should reflect disposable income of \$50.00 per month.
15. The Bankruptcy Code only allows Debtor up to 60 months to cure and reinstate the mortgage(s) and/or pay secured and priority claims as filed.
16. Trustee has not received and/or posted any payments from the Debtor as of the date of the filing of this motion.
17. The Debtor's plan does not indicate that the Debtor filed this case and is contemplating filing a motion for referral for mortgage modification mediation.
18. The Debtor filed this case Pro Se.
19. The Court requires that the Debtor file a Chapter 13 Plan that provides for monthly plan payments to the Trustee in amounts which equal no less than the monthly disposable income and requires that adequate protection payments be made to creditors. In addition, the Court will not allow any secured mortgage or car payment debt to be paid outside of the Chapter 13 Plan.

WHEREFORE, the Trustee moves this Court to dismiss this case, and for any such other relief as is just and proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Notification and/or by United States mail, postage pre-paid, to: All Creditors and Parties in Interest, as listed on the attached matrix, this 16<sup>th</sup> day of June, 2015.

/s/ Laurie K. Weatherford  
Laurie K. Weatherford, Trustee  
Stuart Ferderer, Esq.  
Fla. Bar No. 0746967  
Wayne Spivak, Esq.  
Fla. Bar No. 38191  
P.O. Box 3450  
Winter Park, FL 32790  
(407) 648-8841

Label Matrix for local noticing  
113A-6  
Case 6:15-bk-04338-ABB  
Middle District of Florida  
Orlando  
Tue Jun 16 14:08:14 EDT 2015

Florida Department of Revenue  
Bankruptcy Unit  
Post Office Box 6668  
Tallahassee FL 32314-6668

Brevard County Tax Collector  
Attn: Honorable Lisa Cullen, CFC  
Post Office Box 2500  
Titusville FL 32781-2500

Internal Revenue Service  
PO Box 7346  
Philadelphia PA 19101 7346

EBB Tide Condominium Assoc Inc.  
1978 US1  
Rockledge FL 32955

Sarracco Law  
630 Brevard Ave.  
Cocoa FL 32922-7800

Seth D. Chipman PA  
96 Willard St  
Suite 204  
Cocoa FL 32922-7946

Laurie K Weatherford +  
Post Office Box 3450  
Winter Park, FL 32790-3450

United States Trustee - ORL7/13 7 +  
Office of the United States Trustee  
George C Young Federal Building  
400 West Washington Street, Suite 1100  
Orlando, FL 32801-2210

Eric Messbauer +  
299 East Central Blvd #1  
Cape Canaveral, FL 32920-2628

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Arthur B. Briskman  
Orlando

(d)Internal Revenue Service -  
Post Office Box 7346  
Philadelphia PA 19101-7346

(u)Note: Entries with a '+' at the end of the  
name have an email address on file in CMECF  
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Note: Entries with a '-' at the end of the  
name have filed a claim in this case

End of Label Matrix  
Mailable recipients 9  
Bypassed recipients 3  
Total 12